

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Antwan Kevin Baker,  
Plaintiff  
v.  
Shoemaker, et al.,  
Defendants

Case No.: 2:17-cv-01566-JAD-CWH

## **Order Denying Default Remedies and Directing Plaintiff to Take Further Action to Avoid Dismissal**

[ECF Nos. 17, 20]

Pro se plaintiff Antwan Kevin Baker brings this civil-rights action for events that allegedly occurred during his incarceration at the Clark County Detention Center. The court denied his complaint, allowed Baker to proceed with a single failure-to-protect claim against Correctional Officer Shoemaker only, and directed the Clerk of Court to issue summons for Shoemaker.<sup>1</sup> The court also directed Baker to give the U.S. Marshal the required and completed USM 285 form by July 5, 2018, so that it could serve Shoemaker with the summons and complaint.<sup>2</sup> The U.S. Marshal returned the summons on July 18, 2018, indicating that it did not serve Shoemaker with process because “No USM 285 Received for Service.”<sup>3</sup>

Despite the fact that Shoemaker has not been served,<sup>4</sup> Baker moves for a default and default judgment. The clerk of court may enter a default against a defendant only after he has

<sup>1</sup> ECF No. 5.

<sup>2</sup> *Id.* at 5.

<sup>3</sup> ECF No. 9 at 2.

<sup>4</sup> Baker has filed a series of nonsensical documents that he has titled “notice” or “proof of service.” *See* ECF Nos. 8, 10–13, 14–16. None demonstrates that Shoemaker was served with process.

1 been served with process but “failed to plead or otherwise defend” against the lawsuit.<sup>5</sup> And  
2 default judgment can’t be entered until the clerk has entered default *and* the plaintiff has  
3 demonstrated that a default judgment is appropriate by analyzing the factors outlined by the  
4 Ninth Circuit in *Eitel v. McCool*.<sup>6</sup> Because Shoemaker has not yet been served with process,  
5 neither a default nor a default judgment is available to Baker. So his requests for a default and  
6 default judgment<sup>7</sup> are denied.

7 I will give Baker one more opportunity to take the steps necessary to serve Shoemaker.

8 Accordingly, IT IS HEREBY ORDERED THAT:

9 Baker’s requests for a default and default judgment [ECF Nos. 17, 20] are DENIED;

10 IT IS FURTHER ORDERED that the **Clerk of Court** is directed to:

11 • **ISSUE** a new **summons** for Defendant Shoemaker and **deliver it to the U.S.**

12 **Marshal for service;**

13 • **SEND** to Baker one USM-285 form; and

14 • **SEND** to the U.S. Marshal a copy of the complaint and a copy of this order for  
15 service on Defendant Shoemaker.

16 IT IS FURTHER ORDERED that **Baker has until January 25, 2019, to deliver to the**  
17 **U.S. Marshal the required USM-285 form with relevant information for Defendant**  
18 **Shoemaker. If Baker does not provide the U.S. Marshal with the properly completed USM**  
19 **-285 form for Shoemaker by January 25, 2019, this action will be DISMISSED without**  
20 **prejudice for failure to comply with court order.** After receiving a copy of the USM-285

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22 <sup>5</sup> Fed. R. Civ. P. 55(a).

23 <sup>6</sup> *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986).

7 ECF Nos. 17, 20.

1 forms back from the U.S. Marshal showing whether service was accomplished, Baker **will have**  
2 **20 days to file a notice with the Court identifying whether Shoemaker was served or not.** If  
3 Baker chooses to have service reattempted on Shoemaker (if service was not accomplished the  
4 first time), he must **file a motion** with the court specifying a more detailed name and address for  
5 Shoemaker and whether some other manner of service should be attempted. **That motion must**  
6 **be filed within 20 days of receiving the USM-285 forms back from the U.S. Marshal, or this**  
7 **case will be dismissed without prejudice for failure to prosecute.**

8 Dated: January 2, 2019

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U.S. District Judge